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Before the
Federal Communications Commission
Washington, D.C. 20554

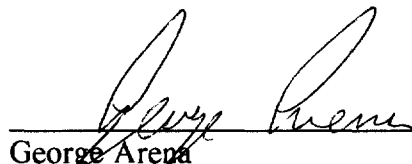
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In the Matter of)	
)	
Amendment of the Commission's Rules)	WT Docket No. 97-81
Regarding Multiple Address Systems)	

REPLY COMMENTS OF MICROWAVE DATA SYSTEMS

Respectfully submitted,

MICROWAVE DATA SYSTEMS



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May 15, 1997

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To: The Commission

REPLY COMMENTS OF MICROWAVE DATA SYSTEMS

Microwave Data Systems (MDS) respectfully submits these Reply Comments in response to the Comments filed by other parties pursuant to the Commission's Notice of Proposed Rule Making released in the above-captioned proceeding February 27, 1997.

I. TREATMENT OF 928/952/956 MHz BANDS

MDS supported the Commission's position that existing users should be grand-fathered and that all new licenses in the 928/952/956 MHz band should be for private users only. We note that a majority of those commenting, including groups¹ representing hundreds of MAS users holding thousands of licenses, agree with this position.

MDS, as well as others, believe, based on their experience and evaluation of license filings, that in excess of 95% of MAS systems operating in these bands are being operated by private users.

¹For example, the UTC and the American Petroleum Institute.

As several parties pointed out, it is important to draw a distinction between simply holding a license and actually operating. Speculators and investors may hold licenses, but it is actually operating a system that should count as being a user. With this distinction drawn, it is clear that private users represent virtually all the actual users of the MAS frequencies².

Because of poor enforcement of the Commission's 18 month build requirement, it is misleading to look at licenses granted more than 18 months ago and then try to infer any kind of user profile. Many licenses, apparently still in effect, may actually be in violation of Commission rules and should have been canceled. Several parties³ called for better enforcement and a return of these licensed, but unused, frequencies to the available pool. MDS concurs in this recommendation.

II. DISPOSITION OF EXISTING 932/941 MHz APPLICATIONS

We support the Commission in its stated intention to dismiss all present applications for licenses at 932/941 MHz. Those applications were predominately filed by speculators, a fact substantiated by an examination of those who filed comments in opposition to the Commission's proposal to dismiss. The comments were mostly from individuals⁴ who had taken a speculative chance on the

² MDS, with its majority share of the MAS radio equipment market, has not had a single sale for a subscriber-based system in the past four years.

³ GPM Gas Corporation, in its comments, calls for the FCC to immediately cancel licenses in violation of the construction or operational requirements of its rules.

⁴For example, the comments of: Robert E. Ryan; Carolyn Richard's Special Enterprises; Charles and Lisa Hooper; Leon & Charlene Wittman; Edna A. Keene; Stanley I. Cohn; and E.C. Adams.

FCC's big lottery give-away. Had they been serious about actually operating a business based on an MAS system, many of them could have obtained a 928/952/956 MHz license, by application, in order to move their business plans forward. To the best of our knowledge, none of these parties has an operational system in the existing bands. This could be easily confirmed by the Commission, should it choose to do so.

Several parties⁵ connected with the alarm and paging industries also opposed the dismissal of applications. While MDS agrees that these parties have legitimate use for MAS licenses, we believe that their opportunity to acquire needed licenses would be increased, not decreased, by a dismissal of applications - if the Commission then opened the 932/941 MHz band to site-by-site licensing applications, as MDS and others proposed in their comments.

III. TREATMENT OF 932/941 AND 928/959 MHz BANDS

The Commission's proposals to auction frequencies in these bands for subscriber-based services are based on the largely speculative filings in 1992, using insupportable assumptions masquerading as factual analysis⁶. MDS pointed out some of the fallacies inherent in the Commission's assumptions in its comments. We note that several other parties⁷ provided

⁵Alarm Industry Communications Committee; AirTouch Paging et al.

⁶Notice of Proposed Rulemaking FCC 97-58, paragraphs 7 and 10, for example.

⁷ For instance, the comments of the UTC, GPM Gas Corporation, and the American Petroleum Institute.

extensive evidence of the faulty nature of the Commission's assumptions and went even further, questioning whether such analysis could actually have been performed, given the information available on license applications and on the Commission's database. Also questioned was the lack of any legal basis on which the Commission could propose auctioning these frequencies.

We reiterate here that it is abundantly clear to us, as it is to others who are actually engaged in operating MAS radio systems and who submitted comments in the present proceeding, that there is, at one and the same time:

- 1) An urgent need for more MAS spectrum to meet the needs of private users, including those who build and support the national energy infrastructure.
- 2) No supportable evidence of any demand for subscriber-based services to operate in the 932/941 MHz and 928/959 MHz MAS bands.
- 3) No legal basis for auctioning frequencies in these bands.
- 4) No user support or technical justification for other than site-by-site licensing.
- 5) No reason other than possible Federal budgetary considerations for most of the proposals in the present proceeding.

Given all this, MDS again reiterates our request that a large portion of these frequencies be allocated to private users, also possibly including some set-aside for Federal and local government users, who are also, essentially private users.

However, in the spirit of compromise, and in recognition of the possibility that there may yet be

some merit in the Commission's proposals, MDS and others have suggested an apportioning of the 932/941 MHz band among the contending uses.

Specifically, MDS proposed that the 40 available channels in the 932/941 MHz band, be apportioned with 25 channels for private users, 5 channels for Federal government and public safety users, and 10 channels for new subscriber-based services subject to new rules.

Several other parties, while supporting allocating and licensing 932/941 to private users, also proposed a similar compromise band-sharing arrangement⁸.

We add now, that any new rules for subscriber-based services must be compatible with the operation of MAS systems in the other channels. Specifically, this must include a power limit on the order of 5 watts. A power limitation is essential to prevent the kind of interference to MAS operations which are currently experienced due to high power paging transmitters in adjacent frequency allocations. This operational difficulty was discussed by several parties in their comments⁹.

⁸ The UTC, in its comments, proposed an identical apportionment. The American Petroleum Institute, in its comments, called for a minimum of 20 channels for private users.

⁹See, for instance, the comments of UTC at Section VII.

IV. OPPOSITION TO GEOGRAPHIC AREA LICENSING

MDS, in its comments, opposed the use of geographic area licensing for private-user MAS channels. Other parties, in their comments, provided an abundance of reasons why the geographic area licensing approach makes no sense at all, except as a way of forcing mutual exclusivity in applications and facilitating the auctioning of spectrum.

Many commenting parties¹⁰ showed how geographic licensing is inimical to the very same spectrum efficiency which has been a Commission imperative in recent years. Therefore, MDS maintains its support for the continuation of licensing on a site-by-site basis. However, MDS could support a 10-channel set-aside for geographic area licensing if private users, as well as subscriber-based services, were eligible to apply for such licenses.

V. OPPOSITION TO SPECTRUM AUCTIONS

Spectrum auctions are only applicable to mutually exclusive applicants. Inasmuch as MDS supports licensing on a site-by-site basis, where mutual exclusivity is an unusual occurrence and the number of mutually exclusive applicants for a given site is likely to be very small, MDS has expressed its opposition to spectrum auctions for private-user MAS licenses. The existing lottery

¹⁰Among those commenting against geographical licensing were: Cooperative Power Association; Burlington Northern Rail Road; Wells Rural Electric Company; Affiliated American Rail Roads; Sensus Technologies, Inc.; GPM Gas Corporation; Southern California Edison; Black & Associates; as well as others.

procedure is a far better license-distribution mechanism under these circumstances than an auction.

VI. CONCLUSION

Private users, licensed on a site-by-site basis under the present rules, have made extensive use of the existing MAS frequencies. Growth of MAS systems has reached the point where spectrum needs have outpaced availability. Private-user MAS systems are not businesses in themselves, but are vital to the safe and effective operation of the energy infrastructure businesses that keep America growing economically. Commercial subscriber-based MAS systems have, in all cases known to MDS, failed. Speculators for MAS frequencies do not add value to the economy, and generally fail in even adding to their own wealth.

MDS believes that the Commission should, in all ways, encourage the private use of MAS frequencies by allowing private users to continue to have access to the existing frequencies at 928/952/956 MHz under the existing rules, and by allowing access to a majority of the new 932/941 MHz band on a site-by-site licensing basis.